

Introduced by Senator Perata

February 20, 2004

An act to amend Sections 1369, 1370, and 1370.01 of the Penal Code, relating to competency.

LEGISLATIVE COUNSEL'S DIGEST

SB 1794, as introduced, Perata. criminal procedure: competency.

Existing law provides that psychotropic medications can be administered to patients in various circumstances, including against a person's will or when a person is incapable of making rationale decisions regarding that medication under certain circumstances, if proper procedures are followed. Separately, existing law authorizes distinct procedures for misdemeanor cases and those that include a felony charge for determining a defendant's mental competence to stand trial if a doubt arises about the mental competence of the defendant, as specified. Under both of these procedures, at least 2 psychologists, psychiatrists, or a combination of both are required to examine the person whose competence is questioned.

This bill would require these appointed mental health professionals to report to the court on various specified issues relating to the person's competence, and to report specified information regarding the potential for psychotropic medication for the defendant.

Under existing law, if a defendant is found mentally incompetent because of a mental disorder, the criminal trial or judgment is suspended until the person becomes mentally competent. Existing law requires the court, in the meantime, to order that the defendant be delivered to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director, or be placed on outpatient status, as



specified. The procedures specified in existing law for the referral of a person for treatment to recover competence do not require a court to hear and determine whether psychotropic medication should be administered to the defendant, as specified.

This bill would require that, prior to making an order committing the defendant for this treatment in either a misdemeanor or felony case, a court would have to hear and determine whether psychotropic medication should be administered to the defendant, and would specify procedures relating to determining the appropriateness of administering psychotropic medications during treatment.

By adding to the duties of county treatment facilities regarding their administration of psychotropic medications to persons during commitments under these provisions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1369 of the Penal Code is amended to
2 read:

3 1369. A trial by court or jury of the question of mental
4 competence shall proceed in the following order:

5 (a) The court shall appoint a psychiatrist or licensed
6 psychologist, and any other expert the court may deem
7 appropriate, to examine the defendant. In any case where the
8 defendant or the defendant's counsel informs the court that the
9 defendant is not seeking a finding of mental incompetence, the
10 court shall appoint two psychiatrists, licensed psychologists, or a



1 combination thereof. One of the psychiatrists or licensed
2 psychologists may be named by the defense and one may be named
3 by the prosecution. *The examining psychiatrists or licensed*
4 *psychologists shall report to the court their opinions of the nature*
5 *of the defendant's mental disorder, if any, the defendant's ability or*
6 *inability to understand the nature of the criminal proceedings or*
7 *assist counsel in the conduct of a defense in a rational manner as*
8 *a result of a mental disorder and, if within the scope of their*
9 *licenses and appropriate to their opinions, whether or not*
10 *treatment with psychotropic medication is medically appropriate*
11 *for the defendant and whether psychotropic medication is likely to*
12 *restore the defendant to mental competence. If an examining*
13 *psychologist is of the opinion that psychotropic medication may be*
14 *medically appropriate for the defendant and that the defendant*
15 *should be evaluated by a psychiatrist to determine if psychotropic*
16 *medication is medically appropriate, the report of the psychologist*
17 *shall include this opinion and a recommendation to the court that*
18 *a psychiatrist examine the defendant. The reports of the examining*
19 *psychiatrists or licensed psychologists shall also address the*
20 *issues of whether the defendant has capacity to make decisions*
21 *regarding psychotropic medication and whether the defendant is*
22 *a danger to self or others. If it is suspected the defendant is*
23 *developmentally disabled, the court shall appoint the director of*
24 *the regional center for the developmentally disabled established*
25 *under Division 4.5 (commencing with Section 4500) of the*
26 *Welfare and Institutions Code, or the designee of the director, to*
27 *examine the defendant. The court may order the developmentally*
28 *disabled defendant to be confined for examination in a residential*
29 *facility or state hospital.*

30 The regional center director shall recommend to the court a
31 suitable residential facility or state hospital. Prior to issuing an
32 order pursuant to this section, the court shall consider the
33 recommendation of the regional center director. While the person
34 is confined pursuant to order of the court under this section, he or
35 she shall be provided with necessary care and treatment.

36 (b) (1) The counsel for the defendant shall offer evidence in
37 support of the allegation of mental incompetence.

38 (2) If the defense declines to offer any evidence in support of
39 the allegation of mental incompetence, the prosecution may do so.

1 (c) The prosecution shall present its case regarding the issue of
2 defendant's present mental competence.

3 (d) Each party may offer rebutting testimony, unless the court,
4 for good reason in furtherance of justice, also permits other
5 evidence in support of the original contention.

6 (e) When the evidence is concluded, unless the case is
7 submitted without final argument, the prosecution shall make its
8 final argument and the defense shall conclude with its final
9 argument to the court or jury.

10 (f) In a jury trial, the court shall charge the jury, instructing
11 them on all matters of law necessary for the rendering of a verdict.
12 It shall be presumed that the defendant is mentally competent
13 unless it is proved by a preponderance of the evidence that the
14 defendant is mentally incompetent. The verdict of the jury shall be
15 unanimous.

16 SEC. 2. Section 1370 of the Penal Code is amended to read:

17 1370. (a) (1) (A) If the defendant is found mentally
18 competent, the criminal process shall resume, the trial on the
19 offense charged shall proceed, and judgment may be pronounced.

20 (B) If the defendant is found mentally incompetent, the trial or
21 judgment shall be suspended until the person becomes mentally
22 competent.

23 (i) In the meantime, the court shall order that the mentally
24 incompetent defendant be delivered by the sheriff to a state
25 hospital for the care and treatment of the mentally disordered, or
26 to any other available public or private treatment facility approved
27 by the community program director that will promote the
28 defendant's speedy restoration to mental competence, or placed on
29 outpatient status as specified in Section 1600.

30 (ii) However, if the action against the defendant who has been
31 found mentally incompetent is on a complaint charging a felony
32 offense specified in Section 290, the prosecutor shall determine
33 whether the defendant previously has been found mentally
34 incompetent to stand trial pursuant to this chapter on a charge of
35 a Section 290 offense, or whether the defendant is currently the
36 subject of a pending Section 1368 proceeding arising out of a
37 charge of a Section 290 offense. If either determination is made,
38 the prosecutor shall so notify the court and defendant in writing.
39 After this notification, and opportunity for hearing, the court shall
40 order that the defendant be delivered by the sheriff to a state

1 hospital or other secure treatment facility for the care and
2 treatment of the mentally disordered unless the court makes
3 specific findings on the record that an alternative placement would
4 provide more appropriate treatment for the defendant and would
5 not pose a danger to the health and safety of others.

6 (iii) If the action against the defendant who has been found
7 mentally incompetent is on a complaint charging a felony offense
8 specified in Section 290 and the defendant has been denied bail
9 pursuant to subdivision (b) of Section 12 of Article I of the
10 California Constitution because the court has found, based upon
11 clear and convincing evidence, a substantial likelihood that the
12 person's release would result in great bodily harm to others, the
13 court shall order that the defendant be delivered by the sheriff to
14 a state hospital for the care and treatment of the mentally
15 disordered unless the court makes specific findings on the record
16 that an alternative placement would provide more appropriate
17 treatment for the defendant and would not pose a danger to the
18 health and safety of others.

19 (iv) The clerk of the court shall notify the Department of Justice
20 in writing of any finding of mental incompetence with respect to
21 a defendant who is subject to clause (ii) or (iii) for inclusion in his
22 or her state summary criminal history information.

23 (C) Upon the filing of a certificate of restoration to
24 competence, the court shall order that the defendant be returned to
25 court in accordance with Section 1372. The court shall transmit a
26 copy of its order to the community program director or a designee.

27 (D) A defendant charged with a violent felony may not be
28 delivered to a state hospital or treatment facility pursuant to this
29 subdivision unless the state hospital or treatment facility has a
30 secured perimeter or a locked and controlled treatment facility, and
31 the judge determines that the public safety will be protected.

32 (E) For purposes of this paragraph, "violent felony" means an
33 offense specified in subdivision (c) of Section 667.5.

34 (F) A defendant charged with a violent felony may be placed
35 on outpatient status, as specified in Section 1600, only if the court
36 finds that the placement will not pose a danger to the health or
37 safety of others.

38 (2) Prior to making the order directing that the defendant be
39 confined in a state hospital or other treatment facility or placed on
40 outpatient status, the court shall *proceed as follows*:

1 (A) *The court shall order the community program director or*
2 *a designee to evaluate the defendant and to submit to the court*
3 *within 15 judicial days of the order a written recommendation as*
4 *to whether the defendant should be required to undergo outpatient*
5 *treatment, or committed to a state hospital or to any other treatment*
6 *facility. No person shall be admitted to a state hospital or other*
7 *treatment facility or placed on outpatient status under this section*
8 *without having been evaluated by the community program*
9 *director or a designee.*

10 (B) *The court shall hear and determine whether medication*
11 *shall be administered to the defendant for the purpose of restoring*
12 *him or her to mental competence as follows:*

13 (i) *If the defendant, with advice of his or her counsel, consents,*
14 *the court order of commitment shall include confirmation that*
15 *psychotropic medication may be given to the defendant as*
16 *prescribed by a treating psychiatrist pursuant to the defendant's*
17 *consent. The commitment order shall also indicate that, if the*
18 *defendant withdraws consent for psychotropic medication, after*
19 *the treating psychiatrist complies with the provisions of*
20 *subparagraph (C), the defendant shall be returned to court for a*
21 *hearing in accordance with this subdivision regarding whether*
22 *psychotropic medication shall be administered involuntarily.*

23 (ii) *If the defendant does not consent to the administration of*
24 *medication, the court may order the involuntary administration of*
25 *medication determined to be medically appropriate by a treating*
26 *hospital, facility, or program described in subdivision (a) if it finds*
27 *any of the following to be true:*

28 (I) *The defendant lacks capacity to refuse medication, and*
29 *psychotropic medication is medically necessary and appropriate,*
30 *given the defendant's medical condition.*

31 (II) *The defendant is a danger to others within the meaning of*
32 *Section 5300 of the Welfare and Institutions Code, or is a danger*
33 *to himself or herself within the meaning of Section 5260 of the*
34 *Welfare and Institutions Code.*

35 (III) *The people have an important governmental interest in*
36 *restoring the defendant to mental competence, that governmental*
37 *interest will be significantly furthered by the involuntary*
38 *administration of psychotropic medication, psychotropic*
39 *medication will be effective and unlikely to have side effects that*
40 *interfere with the patient's ability to cooperate at trial, and*

1 *psychotropic medication is in the patient's best medical interest in*
2 *light of his or her medical condition.*

3 *(iii) In all cases, the treating hospital, facility or program may*
4 *administer medically appropriate psychotropic medication*
5 *prescribed by a psychiatrist in an emergency as described in*
6 *subdivision (m) of Section 5008 of the Welfare and Institutions*
7 *Code.*

8 *(iv) Any report made pursuant to paragraph (1) of subdivision*
9 *(b) shall include a description of any psychotropic medication*
10 *administered to the defendant and its effects and side effects.*
11 *During the time the defendant is confined in a state hospital or*
12 *other treatment facility or placed on outpatient status, either the*
13 *defendant or the people may request that the court review any*
14 *order made pursuant to this subdivision.*

15 *(C) If the defendant consented to psychotropic medication as*
16 *described in clause (i) of subparagraph (B), but subsequently*
17 *withdraws his or her consent, or, if involuntary psychotropic*
18 *medication was not ordered pursuant to clause (ii) of*
19 *subparagraph (B), and the treating psychiatrist determines that*
20 *psychotropic medication has become medically necessary and*
21 *appropriate, the treating psychiatrist shall make efforts to obtain*
22 *informed consent from the defendant for psychotropic medication.*
23 *If informed consent is not obtained from the defendant, and the*
24 *treating psychiatrist is of the opinion that the defendant lacks*
25 *capacity to make decisions regarding psychotropic medication or*
26 *that the defendant is a danger to others within the meaning of*
27 *Section 5300 of the Welfare and Institutions Code, or is a danger*
28 *to himself or herself within the meaning of Section 5260 of the*
29 *Welfare and Institutions Code, a report shall be sent to the*
30 *committing court that includes an assessment of the current mental*
31 *status of the defendant and the opinion of the treating psychiatrist*
32 *that involuntary psychotropic medication has become medically*
33 *necessary and appropriate. The court shall provide copies of the*
34 *report to the prosecuting attorney and to the attorney representing*
35 *the defendant and shall set a hearing to determine whether*
36 *involuntary psychotropic medication should be ordered in the*
37 *manner described in subparagraph (B).*

38 *(3) When the court orders that the defendant be confined in a*
39 *state hospital or other public or private treatment facility, the court*
40 *shall provide copies of the following documents which shall be*

1 taken with the defendant to the state hospital or other treatment
2 facility where the defendant is to be confined:

3 (A) The commitment order, including a specification of the
4 charges.

5 (B) A computation or statement setting forth the maximum
6 term of commitment in accordance with subdivision (c).

7 (C) A computation or statement setting forth the amount of
8 credit for time served, if any, to be deducted from the maximum
9 term of commitment.

10 (D) State summary criminal history information.

11 (E) Any arrest reports prepared by the police department or
12 other law enforcement agency.

13 (F) Any court-ordered psychiatric examination or evaluation
14 reports.

15 (G) The community program director's placement
16 recommendation report.

17 (H) Records of any finding of mental incompetence pursuant
18 to this chapter arising out of a complaint charging a felony offense
19 specified in Section 290 or any pending Section 1368 proceeding
20 arising out of a charge of a Section 290 offense.

21 (4) When the defendant is committed to a treatment facility
22 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
23 court makes the findings specified in clause (ii) or (iii) of
24 subparagraph (B) of paragraph (1) to assign the defendant to a
25 treatment facility other than a state hospital or other secure
26 treatment facility, the court shall order that notice be given to the
27 appropriate law enforcement agency or agencies having local
28 jurisdiction at the site of the placement facility of any finding of
29 mental incompetence pursuant to this chapter arising out of a
30 charge of a Section 290 offense.

31 (5) When directing that the defendant be confined in a state
32 hospital pursuant to this subdivision, the court shall select the
33 hospital in accordance with the policies established by the State
34 Department of Mental Health.

35 (6) (A) If the defendant is committed or transferred to a state
36 hospital pursuant to this section, the court may, upon receiving the
37 written recommendation of the medical director of the state
38 hospital and the community program director that the defendant be
39 transferred to a public or private treatment facility approved by the
40 community program director, order the defendant transferred to



that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community

1 program director concerning the defendant's progress toward
2 recovery of mental competence. Within 90 days of placement on
3 outpatient status, the community program director shall report to
4 the court on this matter. If the defendant has not recovered mental
5 competence, but the report discloses a substantial likelihood that
6 the defendant will regain mental competence in the foreseeable
7 future, the defendant shall remain in the state hospital or other
8 treatment facility or on outpatient status. Thereafter, at six-month
9 intervals or until the defendant becomes mentally competent,
10 where the defendant is confined in a treatment facility, the medical
11 director of the hospital or person in charge of the facility shall
12 report in writing to the court and the community program director
13 or a designee regarding the defendant's progress toward recovery
14 of mental competence. Where the defendant is on outpatient status,
15 after the initial 90-day report, the outpatient treatment staff shall
16 report to the community program director on the defendant's
17 progress toward recovery, and the community program director
18 shall report to the court on this matter at six-month intervals. A
19 copy of these reports shall be provided to the prosecutor and
20 defense counsel by the court. If the report indicates that there is no
21 substantial likelihood that the defendant will regain mental
22 competence in the foreseeable future, the committing court shall
23 order the defendant to be returned to the court for proceedings
24 pursuant to paragraph (2) of subdivision (c). The court shall
25 transmit a copy of its order to the community program director or
26 a designee.

27 (2) Any defendant who has been committed or has been on
28 outpatient status for 18 months and is still hospitalized or on
29 outpatient status shall be returned to the committing court where
30 a hearing shall be held pursuant to the procedures set forth in
31 Section 1369. The court shall transmit a copy of its order to the
32 community program director or a designee.

33 (3) If it is determined by the court that no treatment for the
34 defendant's mental impairment is being conducted, the defendant
35 shall be returned to the committing court. The court shall transmit
36 a copy of its order to the community program director or a
37 designee.

38 (4) At each review by the court specified in this subdivision, the
39 court shall determine if the security level of housing and treatment



1 is appropriate and may make an order in accordance with its
2 determination.

3 (c) (1) At the end of three years from the date of commitment
4 or a period of commitment equal to the maximum term of
5 imprisonment provided by law for the most serious offense
6 charged in the information, indictment, or misdemeanor
7 complaint, whichever is shorter, a defendant who has not
8 recovered mental competence shall be returned to the committing
9 court. The court shall notify the community program director or
10 a designee of the return and of any resulting court orders.

11 (2) Whenever any defendant is returned to the court pursuant
12 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this
13 subdivision and it appears to the court that the defendant is gravely
14 disabled, as defined in subparagraph (B) of paragraph (1) of
15 subdivision (h) of Section 5008 of the Welfare and Institutions
16 Code, the court shall order the conservatorship investigator of the
17 county of commitment of the defendant to initiate conservatorship
18 proceedings for the defendant pursuant to Chapter 3 (commencing
19 with Section 5350) of Part 1 of Division 5 of the Welfare and
20 Institutions Code. Any hearings required in the conservatorship
21 proceedings shall be held in the superior court in the county that
22 ordered the commitment. The court shall transmit a copy of the
23 order directing initiation of conservatorship proceedings to the
24 community program director or a designee and shall notify the
25 community program director or a designee of the outcome of the
26 proceedings.

27 (3) Where the defendant is confined in a treatment facility, a
28 copy of any report to the committing court regarding the
29 defendant's progress toward recovery of mental competence shall
30 be provided by the committing court to the prosecutor and to the
31 defense counsel.

32 (d) The criminal action remains subject to dismissal pursuant
33 to Section 1385. If the criminal action is dismissed, the court shall
34 transmit a copy of the order of dismissal to the community
35 program director or a designee.

36 (e) If the criminal charge against the defendant is dismissed, the
37 defendant shall be released from any commitment ordered under
38 this section, but without prejudice to the initiation of any
39 proceedings that may be appropriate under the

1 Lanterman-Petris-Short Act, Part 1 (commencing with Section
2 5000) of Division 5 of the Welfare and Institutions Code.

3 (f) As used in this chapter, “community program director”
4 means the person, agency, or entity designated by the State
5 Department of Mental Health pursuant to Section 1605 of this code
6 and Section 4360 of the Welfare and Institutions Code.

7 (g) For the purpose of this section, “secure treatment facility”
8 shall not include, except for state mental hospitals, state
9 developmental centers, and correctional treatment facilities, any
10 facility licensed pursuant to Chapter 2 (commencing with Section
11 1250) of, Chapter 3 (commencing with Section 1500) of, or
12 Chapter 3.2 (commencing with Section 1569) of, Division 2 of the
13 Health and Safety Code, or any community board and care facility.

14 SEC. 3. Section 1370.01 of the Penal Code is amended to
15 read:

16 1370.01. (a) (1) If the defendant is found mentally
17 competent, the criminal process shall resume, the trial on the
18 offense charged shall proceed, and judgment may be pronounced.
19 If the defendant is found mentally incompetent, the trial or
20 judgment shall be suspended until the person becomes mentally
21 competent, and the court shall order that (A) in the meantime, the
22 defendant be delivered by the sheriff to an available public or
23 private treatment facility approved by the county mental health
24 director that will promote the defendant’s speedy restoration to
25 mental competence, or placed on outpatient status as specified in
26 this section, and (B) upon the filing of a certificate of restoration
27 to competence, the defendant be returned to court in accordance
28 with Section 1372. The court shall transmit a copy of its order to
29 the county mental health director or his or her designee.

30 (2) Prior to making the order directing that the defendant be
31 confined in a treatment facility or placed on outpatient status, the
32 court shall *proceed as follows*:

33 (A) *The court shall* order the county mental health director or
34 his or her designee to evaluate the defendant and to submit to the
35 court within 15 judicial days of the order a written
36 recommendation as to whether the defendant should be required
37 to undergo outpatient treatment, or committed to a treatment
38 facility. No person shall be admitted to a treatment facility or
39 placed on outpatient status under this section without having been
40 evaluated by the county mental health director or his or her

designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of Mental Health for these placements.

(B) The court shall hear and determine whether medication shall be administered to the defendant for the purpose of restoring him or her to mental competence as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that psychotropic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for psychotropic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether psychotropic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court may order the involuntary administration of medication determined to be medically appropriate by a treating hospital, facility, or program described in subdivision (a) if it finds any of the following to be true:

(I) The defendant lacks capacity to refuse medication, and psychotropic medication is medically necessary and appropriate, given the defendant's medical condition.

(II) The defendant is a danger to others within the meaning of Section 5300 of the Welfare and Institutions Code, or is a danger to himself or herself within the meaning of Section 5260 of the Welfare and Institutions Code.

(III) The people have an important governmental interest in restoring the defendant to mental competence, that governmental interest will be significantly furthered by the involuntary administration of psychotropic medication, psychotropic medication will be effective and unlikely to have side effects that interfere with the patient's ability to cooperate at trial, and psychotropic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate psychotropic medication

1 *prescribed by a psychiatrist in an emergency as described in*
2 *subdivision (m) of Section 5008 of the Welfare and Institutions*
3 *Code.*

4 *(iv) Any report made pursuant to paragraph (1) of subdivision*
5 *(b) shall include a description of any psychotropic medication*
6 *administered to the defendant and its effects and side effects.*
7 *During the time the defendant is confined in a state hospital or*
8 *other treatment facility or placed on outpatient status, either the*
9 *defendant or the people may request that the court review any*
10 *order made pursuant to this subdivision.*

11 *(C) If the defendant consented to psychotropic medication as*
12 *described in clause (i) of subparagraph (B), but subsequently*
13 *withdraws his or her consent, or, if involuntary psychotropic*
14 *medication was not ordered pursuant to clause (ii) of*
15 *subparagraph (B), and the treating psychiatrist determines that*
16 *psychotropic medication has become medically necessary and*
17 *appropriate, the treating psychiatrist shall make efforts to obtain*
18 *informed consent from the defendant for psychotropic medication.*
19 *If informed consent is not obtained from the defendant, and the*
20 *treating psychiatrist is of the opinion that the defendant lacks*
21 *capacity to make decisions regarding psychotropic medication or*
22 *that the defendant is a danger to others within the meaning of*
23 *Section 5300 of the Welfare and Institutions Code, or is a danger*
24 *to himself or herself within the meaning of Section 5260 of the*
25 *Welfare and Institutions Code, a report shall be sent to the*
26 *committing court that includes an assessment of the current mental*
27 *status of the defendant and the opinion of the treating psychiatrist*
28 *that involuntary psychotropic medication has become medically*
29 *necessary and appropriate. The court shall provide copies of the*
30 *report to the prosecuting attorney and to the attorney representing*
31 *the defendant and shall set a hearing to determine whether*
32 *involuntary psychotropic medication should be ordered in the*
33 *manner described in subparagraph (B).*

34 *(3) When the court, after considering the placement*
35 *recommendation of the county mental health director required in*
36 *paragraph (2), orders that the defendant be confined in a public or*
37 *private treatment facility, the court shall provide copies of the*
38 *following documents which shall be taken with the defendant to*
39 *the treatment facility where the defendant is to be confined:*

1 (A) The commitment order, including a specification of the
2 charges.

3 (B) A computation or statement setting forth the maximum
4 term of commitment in accordance with subdivision (c).

5 (C) A computation or statement setting forth the amount of
6 credit for time served, if any, to be deducted from the maximum
7 term of commitment.

8 (D) State Summary Criminal History information.

9 (E) Any arrest reports prepared by the police department or
10 other law enforcement agency.

11 (F) Any court-ordered psychiatric examination or evaluation
12 reports.

13 (G) The county mental health director's placement
14 recommendation report.

15 (4) A person subject to commitment under this section may be
16 placed on outpatient status under the supervision of the county
17 mental health director or his or her designee by order of the court
18 in accordance with the procedures contained in Title 15
19 (commencing with Section 1600) except that where the term
20 "community program director" appears the term "county mental
21 health director" shall be substituted.

22 (5) If the defendant is committed or transferred to a public or
23 private treatment facility approved by the county mental health
24 director, the court may, upon receiving the written
25 recommendation of the county mental health director, transfer the
26 defendant to another public or private treatment facility approved
27 by the county mental health director. In the event of dismissal of
28 the criminal charges before the defendant recovers competence,
29 the person shall be subject to the applicable provisions of Part 1
30 (commencing with Section 5000) of Division 5 of the Welfare and
31 Institutions Code. Where either the defendant or the prosecutor
32 chooses to contest the order of transfer, a petition may be filed in
33 the court for a hearing, which shall be held if the court determines
34 that sufficient grounds exist. At the hearing, the prosecuting
35 attorney or the defendant may present evidence bearing on the
36 order of transfer. The court shall use the same standards as are used
37 in conducting probation revocation hearings pursuant to Section
38 1203.2.

39 Prior to making an order for transfer under this section, the court
40 shall notify the defendant, the attorney of record for the defendant,

1 the prosecuting attorney, and the county mental health director or
2 his or her designee.

3 (b) Within 90 days of a commitment made pursuant to
4 subdivision (a), the medical director of the treatment facility to
5 which the defendant is confined shall make a written report to the
6 court and the county mental health director or his or her designee,
7 concerning the defendant's progress toward recovery of mental
8 competence. Where the defendant is on outpatient status, the
9 outpatient treatment staff shall make a written report to the county
10 mental health director concerning the defendant's progress toward
11 recovery of mental competence. Within 90 days of placement on
12 outpatient status, the county mental health director shall report to
13 the court on this matter. If the defendant has not recovered mental
14 competence, but the report discloses a substantial likelihood that
15 the defendant will regain mental competence in the foreseeable
16 future, the defendant shall remain in the treatment facility or on
17 outpatient status. Thereafter, at six-month intervals or until the
18 defendant becomes mentally competent, where the defendant is
19 confined in a treatment facility, the medical director of the hospital
20 or person in charge of the facility shall report in writing to the court
21 and the county mental health director or a designee regarding the
22 defendant's progress toward recovery of mental competence.
23 Where the defendant is on outpatient status, after the initial 90-day
24 report, the outpatient treatment staff shall report to the county
25 mental health director on the defendant's progress toward
26 recovery, and the county mental health director shall report to the
27 court on this matter at six-month intervals. A copy of these reports
28 shall be provided to the prosecutor and defense counsel by the
29 court. If the report indicates that there is no substantial likelihood
30 that the defendant will regain mental competence in the
31 foreseeable future, the committing court shall order the defendant
32 to be returned to the court for proceedings pursuant to paragraph
33 (2) of subdivision (c). The court shall transmit a copy of its order
34 to the county mental health director or his or her designee.

35 (c) (1) If, at the end of one year from the date of commitment
36 or a period of commitment equal to the maximum term of
37 imprisonment provided by law for the most serious offense
38 charged in the misdemeanor complaint, whichever is shorter, the
39 defendant has not recovered mental competence, the defendant
40 shall be returned to the committing court. The court shall notify the



1 county mental health director or his or her designee of the return
2 and of any resulting court orders.

3 (2) Whenever any defendant is returned to the court pursuant
4 to subdivision (b) or paragraph (1) of this subdivision and it
5 appears to the court that the defendant is gravely disabled, as
6 defined in subparagraph (A) of paragraph (1) of subdivision (h) of
7 Section 5008 of the Welfare and Institutions Code, the court shall
8 order the conservatorship investigator of the county of
9 commitment of the defendant to initiate conservatorship
10 proceedings for the defendant pursuant to Chapter 3 (commencing
11 with Section 5350) of Part 1 of Division 5 of the Welfare and
12 Institutions Code. Any hearings required in the conservatorship
13 proceedings shall be held in the superior court in the county that
14 ordered the commitment. The court shall transmit a copy of the
15 order directing initiation of conservatorship proceedings to the
16 county mental health director or his or her designee and shall
17 notify the county mental health director or his or her designee of
18 the outcome of the proceedings.

19 (d) The criminal action remains subject to dismissal pursuant
20 to Section 1385. If the criminal action is dismissed, the court shall
21 transmit a copy of the order of dismissal to the county mental
22 health director or his or her designee.

23 (e) If the criminal charge against the defendant is dismissed, the
24 defendant shall be released from any commitment ordered under
25 this section, but without prejudice to the initiation of any
26 proceedings which may be appropriate under Part 1 (commencing
27 with Section 5000) of Division 5 of the Welfare and Institutions
28 Code.

29 SEC. 4. Notwithstanding Section 17610 of the Government
30 Code, if the Commission on State Mandates determines that this
31 act contains costs mandated by the state, reimbursement to local
32 agencies and school districts for those costs shall be made pursuant
33 to Part 7 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the claim for
35 reimbursement does not exceed one million dollars (\$1,000,000),
36 reimbursement shall be made from the State Mandates Claims
37 Fund.

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